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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/751,009
Filing Date: December 29, 2000
Appellant(s): DAOUD ET AL.

Gregory W. Osterloth (Registration No. 36,345)
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed September 18, 2006 appealing from the Office action mailed July 25, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6871233	**Bearden**	**3-2005**
6483805	**Davies**	**11-2002**

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

1. Claim Rejections - 35 USC § 102

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the appellant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the appellant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 1, 3, 4, 5 and 9 are rejected under 35 U.S.C. 102(e) as being unpatentable over Bearden et al. U.S. 6,871,233.

Bearden teaches the invention as claimed including method and apparatus for use in specifying and insuring service-level quality of service in computer networks (see abstract).

As to claim 1, Bearden teaches an apparatus for identifying a requested level of service for a transaction, comprising:

computer readable storage media (figure 3, item 301); and computer readable program code stored in said storage media, comprising:

a) program code for prompting a user to select a requested level of service for said transaction (column 1, lines 54-67; column 4, lines 20-25);

b) program code for assigning said requested level of service to said transaction (column 2, line 3-7).

As to claim 3, Bearden teaches an apparatus, as in claim 1, further comprising:

a) program code for selecting a backup level of service (figure 4; column 5, line 45 to column 6, line 24, Bearden discloses if the QoS exceeds the selected QoS goal, a set of actions is executed to reduce the network resources); and

b) program code for assigning said backup level of service to said transaction (figure 4, item 402; column 6, lines 6-7).

As to claim 4, Bearden teaches an apparatus, as in claim 1, wherein said requested level of service is a predefined service category (column 3, lines 43-47).

As to claim 5, Bearden teaches an apparatus for identifying a requested level of service for a transaction, comprising:

computer readable storage media (figure 3, item 301); and computer readable program code stored in said storage media, comprising:

a) program code for selecting said requested level of service for said transaction, said request level of service being based on a user identification (column 1, lines 54-67; column 4, lines 20-25; Column 2, lines 8-11);

b) program code for assigning said requested level of service to said transaction (column 2, line 3-7).

As to claim 9, Bearden teaches a method for requesting a level of service for a transaction on a network, comprising:

selecting said requested level of service for said transaction via a user interface (column 1, lines 54-67; column 4, lines 20-25);

assigning said requested level of service to said transaction (column 2, line 3-7).

3. Claims 14, 15, 17 and 18 are rejected under 35 U.S.C. 102(e) as being unpatentable over Davies et al. U.S. 6,483,805.

Davies teaches the invention as claimed including Internet differentiated services service for transaction applications (see abstract).

As to claim 14, Davies teaches an apparatus for routing a transaction over a network based on a requested level of service associated with said transaction, comprising:

a number of computer readable storage media (column 7, line 55); and

computer readable program code stored in said number of storage media, comprising:

a) program code for selecting said requested level of service for said transaction (column 7, lines 47-59);

b) program code for assigning a service tag to said transaction, said service tag including said requested level of service, and said program code assigning parts of said service tag at more than one point on said network (column 6, line 66 to column 7, line 6; column 8, line 62 to column 9, line 4).

c) reading said requested level of service from said service; and d) directing said transaction over said network based on said requested level of service read from said service tag (column 7, lines 34-45).

As to claim 15, Davies teaches an apparatus, as in claim 14, wherein said transaction is directed over said network to a device best providing said requested level of service (column 7, lines 41-45, Davies discloses applying different treatments

to different classes at different classes quality of service can be obtained for each class (i.e. every QoS request is forwarded to the proper destination or "device")).

As to claim 17, Davies teaches an apparatus, as in claim 14, wherein said service tag is read by program code at more than one point on said network (column 7, lines 35-9).

As to claim 18, Davies teaches an apparatus, as in claim 14, further comprising program code for changing said requested level of service included on said service tag (column 7, lines 19-34, Davies discloses excess of the agreed rate or offering inferior service and mutating the marking rate to an alternate value).

4. Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bearden U.S. 6,871,233 in view of Davies U.S. 6,483,805.

Bearden teaches the invention substantially as claimed including method and apparatus for use in specifying and insuring service-level quality of service in computer networks (see abstract).

As to claim 2, Bearden teaches an apparatus, as in claim 1.

Bearden fails to teach said transaction is a packetized signal comprising at least a data packet, and wherein a service tag is associated with said data packet by said program code for assigning said requested level of service, said service tag including said requested level of service.

However, Davies teaches Internet differentiated services service for transaction applications. Davies teaches said transaction is a packetized signal comprising at least a data packet, and wherein a service tag is associated with said data packet by said program code for assigning said requested level of service, said service tag including said requested level of service (column 6, line 66 to column 7, line 3).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Bearden in view of Davies to provide said transaction is a packetized signal comprising at least a data packet, and wherein a service tag is associated with said data packet by said program code for assigning said requested

level of service, said service tag including said requested level of service. One would be motivated to do so to allow indicating the class of the traffic (column 7, line 6).

(10) Response to Argument

Appellant's arguments filed 09/18/06 have been fully considered but they are not persuasive.

(A) As per appellant's argument filed on September 18, 2006, Appellant argues on pages 9 and 11-12 that Bearden fails to show "a) program code for prompting a user to select a requested level of service for said transaction..., and request level being based on user identification...".

In regards to point (A), examiner respectfully disagrees.

In column 4, lines 19-25, Bearden discloses enabling service providers and clients to establish service-level agreement (SLA's) (i.e. a contract between the provider and the user who specifies the level of service that is expected during its term (see www.answers.com) based on goals and objectives that are mutually understood...

(B) The appellant argues on pages 10 and 12 of the brief on appeal that in Bearden the client is not prompted to "select a requested level of service" for any particular transaction, but is only prompted to specify a QoS goal for all transactions.

In regards to point (B), examiner respectfully disagrees.

Limitations such as "select a requested level of service" for any particular transaction is not in the claims. Besides, if the client is only prompted to specify a QoS goal for all transactions in Bearden's as stated by Appellant, "prompting a user to select a requested level of service for said transaction" is implied as well.

(C) The appellant argues on page 10 of the brief on appeal that with respect to claim 3, the Examiner asserts that Bearden teaches "program code for selecting a backup level of service" in FIG. 4, and in col. 5, line 45 - col. 6, line 24. Appellants disagree. The Examiner's cites only refer to allocating and de-allocating network resources to achieve a single QoS goal (or set of goals). Appellants cannot find any mention of anything corresponding to a "backup level of service".

In regards to point (C), examiner respectfully disagrees.

Column 6, lines 1-7, Bearden discloses determining and executing a set of actions to reduce network resource if the delivered QoS exceeds the selected QoS goal, inherently saving or keeping the exceeded amount of the QoS in a safe place ,(i.e. Examiner construed this limitation as "backup level of service" or backup (i.e. to make a copy of important data onto a different storage medium for safety (see www.answers.com)) since they have the same functionality) .

(D) As to claim 14, the appellant argues on pages 13-14 that appellants fail to appreciate the relevance of the cited reference and find no teaching or suggestion of the claimed limitation.

In regards to point (D), examiner respectfully disagrees.

Column 6, line 63 to column 7, line 8, Davies discloses Both DS Edge and DS Interior Devices in a given DS Domain must implement a consistent set of forwarding treatments which are known as Per Hop Behaviours (PHBs). The DS architecture supports enhanced Quality of Service (QoS) for Internet Protocol (IP) services by means of marking each individual packet used to deliver data across an IP network with a code comprising a small number of bits. Every traffic aggregate, which passes through a DS node, is marked with a DS codepoint (6 bit number), which indicates the class of the traffic. The codepoint is used (for example using a mapping table) to select the PHB to which the traffic is subjected as it passes through a node (i.e. inherently the same as "selecting said requested level of service for transaction").

(E) As to claim 14, the appellant argues on page 14 that appellant disagree that Davies teaches b) program code for assigning a service tag to said transaction, said service tag includes said requested level of service, and said program code assigning parts of said service tag at more than one point on said network. Furthermore, Appellants states that claim 14 recites "assigning a service tag to [a] transaction".

In regards to point (E), examiner respectfully disagrees.

Column 6, line 66 to column 7, line 6, Davies discloses the DS architecture supports enhanced Quality of Service (QoS) for Internet Protocol (IP) services by means of marking each individual packet used to deliver data across an IP network with a code comprising a small number of bits (i.e. "assigning a service tag to a transaction").

Every traffic aggregate, which passes through a DS node, is marked with a DS codepoint (6 bit number) (i.e. "service tag"), which indicates the class of the traffic.

(F) As to claim 14, appellant argues on pages 14 and 15 that appellant disagree that Davies teaches c) reading said requested level of service from said service; and d) directing said transaction over said network based on said requested level of service read from said service tag, and the reading of a level of service from a transaction's service tag and directing the transaction accordingly, whereas Davies routes packets. Davies' purpose for placing "a small number of bits" on a packet is to lump certain "bits" into classes. The classes are then subject to class-specific routing. Routing is the passive execution of processes to allow a packet to reach its intended destination. Directing, as in claim 14, actively determines where the transaction is to go.

In regards to point (F), examiner respectfully disagrees.

Column 7, lines 34-45, Davies discloses Routers which process the packets as they are forwarded across the IP network inspect the code and treat each packet marked with the same value in the same way when determining the priority or preference to give to those packets on the next hop of their path through the network. Each set of similarly-marked packets constitutes an class, and by applying different treatments to different classes a different quality of service can be obtained for each class. For example, access to a portion of the network may be refused to traffic in a given class which exceeds, in some measurable way, a previously agreed contract typically known Service Level Agreement (SLA). Just as appellant acknowledge that

Davies routes packets while appellant's claim 14 teaches directing the transaction accordingly. Examiner is pointing out Appellant to www.answers.com for definition of router, which is as follow: a network device that forwards packets from one network to another. Based on internal routing tables, routers read each incoming packet and decide how to forward it (i.e. directing the transaction). To which interface on the router outgoing packets are sent may be determined by any combination of source and destination address as well as current traffic conditions. It is clear that the routers of Davies "read the level of service from a transaction's service tag and directing the transaction accordingly".

(G) As to claim 14, appellant argues on page 16 that the references lack any suggestion to be combined, and such a combination would be counterintuitive.

In regards to point (G), examiner respectfully disagrees.

In response to appellant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, on column 6, lines 66 to column 7, line 3, Davies discloses The DS architecture supports enhanced Quality of Service (QoS) for Internet Protocol (IP) services by means of marking each

individual packet used to deliver data across an IP network with a code comprising a small number of bits. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Bearden in view of Davies to provide said transaction is a packetized signal comprising at least a data packet, and wherein a service tag is associated with said data packet by said program code for assigning said requested level of service, said service tag including said requested level of service. One would be motivated to do so to allow indicating the class of the traffic (column 7, line 6).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is respectfully submitted that the rejection should be sustained.

Respectfully Submitted,

El Hadji Sall

November 24, 2006

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